

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES TRUST CO., N.A.,  
in its capacity as Plan Administrator and  
Trustee of the Arthur D. Little, Inc.  
Employees' MDT Retirement Plan,

Plaintiff,

v.

KARL P. FAGANS, and GARY BECK,

Defendant.

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CIVIL ACTION

No: 05cv10013-WGY

**AFFIDAVIT OF KARL P. FAGANS**

I, Karl P. Fagans, hereby depose and say as follows:

1. In 1999, after a twenty-seven year career with Arthur D. Little ("ADL"), I retired. Currently, I am a permanent resident of North Carolina, residing in Chocowinity. I also have a home in Martha's Vineyard where I have spent a few weeks during each of the last several years.

2. During my employment with ADL, I participated in its retirement plan, the Arthur D. Little, Inc. Employees' MDT Retirement Plan ("the "Plan").

3. At the time of my retirement from ADL, I rolled a substantial portion of my retirement fund with the Plan into an Individual Retirement Account. I elected to receive the balance of my Plan funds in bi-annual installments. As of June 30, 2002, my retirement fund with the Plan had been exhausted and showed a balance of \$0.00. I have not received any payments from the Plan since June 2002.

4. In or about July 2002, I received a letter from United States Trust Co., N.A. (“US Trust”), claiming that I had received an excess distribution from the Plan in the amount of \$18,434.32. In response to this letter, I wrote to US Trust in October 2002 seeking an explanation. I requested that the relevant Plan documents as well as certified financial statements concerning the plan value and the value of my accounts be provided. I did not receive any response to my letter.

5. In or about May 2004, I received a letter from the law firm Palmer & Dodge, LLP, representing US Trust, demanding payment of \$18,434.32 and claiming that I had engaged in the “willful and wrongful conversion of funds.” I then wrote to Palmer & Dodge, enclosing copies of my 2002 letters to US Trust, and inquiring when I would receive the information requested. There was additional correspondence between my then-attorney and US Trust’s counsel.

6. I understand that on or about January 4, 2005, US Trust initiated this lawsuit. The lawsuit now seeks \$43,434.32 in alleged overpayments. In February 2005, I received correspondence from US Trust’s current counsel enclosing a Request for Waiver of Service of Summons. I signed the document on or about March 3, 2005 and returned it to US Trust’s counsel.

7. On or about August 9, 2005, I sent a letter to the Clerk of this Court, apologizing for the delay in filing an Answer. I advised the Court that I could not afford to hire counsel at this time, sought information about how to file an Answer and stated the facts I thought relevant to this situation.

8. I heard nothing further from either the Court or US Trust's counsel until June 23, 2006, when I received the Court's Notice of Default. At that time, I immediately faxed it to my counsel, whom I had retained in March 2006. I was never served with US Trust's Application For Entry of Default.

9. The funds that I received from the Plan were deposited in my personal checking account and were not segregated in any way. As indicated previously, the last payment I received from the fund was in June 2002. Those funds have long-since been expended.

Signed under the pains and penalties of perjury this 12th day of July 2006.

/s/Karl P. Fagans  
Karl P. Fagans